

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY)	MDL No. 1456
AVERAGE WHOLESALE PRICE)	Master File No. 1:01-CV-12257-PBS
LITIGATION)	Sub-Category Case No. 1:08-CV-11200
)	
THIS DOCUMENT RELATES TO:)	Judge Patti B. Saris
<i>United States ex rel. Linnette Sun and Greg</i>)	
<i>Hamilton, Relators</i>)	
<i>v.</i>)	
<i>Baxter Hemoglobin Therapeutics and Baxter</i>)	
<i>International Inc.</i>)	
)	

**BAXTER INTERNATIONAL INC.'S MOTION
TO DISMISS RELATORS' COMPLAINT**

Pursuant to Federal Rules of Civil Procedure 12(b)(1), and 12(b)(6), defendant Baxter International Inc. (“Baxter”), by and through its attorneys, respectfully requests that the Court dismiss with prejudice Counts I-III and VII-XXI of Relators’ June 14, 2005 Amended Complaint for Damages Under the Federal and Various State False Claims Acts for the reasons set forth in the attached Memorandum in Support of Baxter International Inc.’s Motion to Dismiss Relators’ Complaint.

Additionally, Baxter respectfully requests that the Court remand to the District of Colorado the claims for Retaliation in Violation of 31 U.S.C. § 3730(h) (Count IV), Retaliation in Violation of California Government Code § 12653 (Count V), Retaliation in Violation of California Public Policy (Count VI), Discrimination Under the California Fair Employment and Housing Act (Count XXII), and Harassment Under the California Fair Employment Housing Act (Count XXIII).

A proposed order is attached for the Court’s convenience.

Respectfully submitted,

Dated: August 14, 2009

/s/ Ruchi Jain

J. Andrew Jackson
Merle M. DeLancey
Tina D. Reynolds
Ruchi Jain
DICKSTEIN SHAPIRO LLP
1825 Eye Street NW
Washington, DC 20006
Telephone: (202) 420-2200
Facsimile: (202) 420-2201
Admitted pro hac

Peter E. Gelhaar (BBO #188310)
DONNELLY, CONROY & GELHAAR, LLP
One Beacon Street, 33rd Floor
Boston, MA 02108
Telephone: (617) 720-2880
Facsimile: (617) 720-3554

Counsel for Defendant Baxter International Inc.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(2)

I certify that the moving party has communicated with counsel for Relators in an effort to resolve the dispute referred to in this Motion, and that the parties have not been able to reach agreement with respect thereto.

/s/ Ruchi Jain

Ruchi Jain

DICKSTEIN SHAPIRO LLP

1825 Eye Street NW

Washington, DC 20006

Telephone: (202) 420-2200

Facsimile: (202) 420-2201

CERTIFICATE OF SERVICE

I hereby certify that I, Ruchi Jain, an attorney, electronically filed the foregoing BAXTER INTERNATIONAL INC.'S MOTION TO DISMISS RELATORS' COMPLAINT with the Clerk of the Court for the District of Massachusetts using the Court's CM/ECF system on August 14, 2009. I also caused a true and correct copy of the foregoing document to be delivered to all counsel of record by electronic service via LexisNexis File & Serve, for posting and notification to all parties. In addition, the individuals listed below were served a courtesy copy via U.S. Mail.

/s/ Ruchi Jain

Ruchi Jain

DICKSTEIN SHAPIRO LLP

1825 Eye Street NW

Washington, DC 20006

Telephone: (202) 420-2200

Facsimile: (202) 420-2201

Edwin Winstead
Assistant United States Attorney
1225 Seventeenth Street
Suite 700
Denver, CO 80202

Greg Abbott, Attorney General
Office of the Texas Attorney General
Capitol Station
P.O. Box 12548
Austin, TX 78711-2548

Lisa Madigan, Attorney General
Office of the Illinois Attorney General
James R. Thompson Center
100 W. Randolph Street
Chicago, IL 60601

Joseph R. Biden, III, Attorney General
Office of the Delaware Attorney General
Carvel State Office Building
820 N. French Street
Wilmington, DE 19801

Mark J. Bennett, Attorney General
Office of the Hawaii Attorney General
425 Queen Street
Honolulu, HI 96813

Edmund G. Brown, Attorney General
Brian Frankel
Office of the California Attorney General
1300 I Street
Suite 1740
Sacramento, CA 95814

Martha Coakley , Attorney General
Office of the Massachusetts Attorney General
1 Ashburton Place
Boston, MA 02108

Robert E. Cooper, Jr., Attorney General
Office of the Tennessee Attorney General
500 Charlotte Avenue
Nashville, TN 37243

James D. Caldwell, Attorney General
Office of the Louisiana Attorney General
P.O. Box 94095
Baton Rouge, LA 70804-4095

Gary King, Attorney General
Office of the New Mexico Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Catherine Cortez Masto, Attorney General
Office of the Nevada Attorney General
Old Supreme Court Building
100 North Carson Street
Carson City, NV 89701

Bill McCollum, Attorney General
Office of the Florida Attorney General
The Capitol
PL-01
Tallahassee, FL 32399-1050

Dustin McDaniel, Attorney General
Office of the Arkansas Attorney General
200 Tower Building
323 Center Street
Little Rock, AR 72201-2610

Bill Mims, Attorney General
Randall L. Clouse, Director
Medicaid Fraud Control Unit
Office of the Virginia Attorney General
900 E. Main Street
5th Floor
Richmond, VA 23219

Peter Nickles, Attorney General
Office of the DC Attorney General
John A. Wilson Building
1350 Pennsylvania Avenue, NW Suite 409
Washington, DC 20009

Mark Shurtleff, Attorney General
Office of the Utah Attorney General
State Capitol
Room 236
Salt Lake City, UT 84114-0810